Supreme Court, U.S.
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No. 91-2005

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

ROGER LEE SIMMONS,
Petitioner,

v.

GENERAL ELECTRIC COMPANY;
METROPOLITAN LIFE INSURANCE COMPANY; and
ELECTRIC MUTUAL INSURANCE COMPANY,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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RESPONDENT ELECTRIC MUTUAL INSURANCE COMPANY'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

The petitioner, Roger Lee Simmons ("Simmons"), is a former employee of respondent, General Electric Company ("General Electric"). Simmons was employed at General Electric's gas turbine plant in Greenville, South Carolina, from approximately March 13, 1978 until May 8, 1987. On October 31, 1987, Simmons initiated a South Carolina workers' compensation claim against General Electric and Electric Mutual Liability Insurance Company ("Electric Mutual")[1], the workers' compensation

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[1] Pursuant to Sup. Ct. R. 29.1, respondent Electric Mutual declares that it has no parent company or non-wholly-owned subsidiary.

carrier for General Electric. Simmons claimed that he had sustained an occupational disease or accidental injury to his respiratory system during the course and scope of his employment. Following several hearings and appeals involving Simmons' workers' compensation claim, workers' compensation benefits, as awarded by the South Carolina Workers' Compensation Commission and affirmed by the state court, were paid in full by respondents General Electric and Electric Mutual.[2]

Simmons filed the present federal court actions on June 1, 1990 and June 4, 1990 [3] while the workers' compensation claim was proceeding before the South Carolina Workers' Compensation Commission. Simmons' present claims are allegedly based upon the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* Although the Complaints and the Petition for Certiorari are inartfully drafted, Simmons' present action appears to allege that he is due additional benefits under either General Electric's or Metropolitan Life Insurance Company's employee benefit programs, or both.

United States Magistrate Judge William M. Catoe, Jr. and United States District Court Judge Henry M. Herlong, Jr. reviewed the case, the language of the respective plans of General Electric and Metropolitan Life Insur-

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[2] The hearing commissioner with the South Carolina Workers' Compensation Commission denied the petitioner's claim on July 11, 1988 based upon claimant's failure to prove a proper claim for occupational disease or injury by accident. This was reversed by an appellate panel of the Workers' Compensation Commission. The Order was subsequently appealed to the State Court of Common Pleas in Greenville County, which upheld the decision of the Full Commission. A subsequent appeal to the South Carolina Supreme Court was withdrawn prior to a hearing and decision.

[3] The Complaints were later consolidated by the United States District Court.

ance Company ("Metropolitan")[4], and determined the nature and amount of benefits due under the employee benefit programs. Magistrate Judge Catoe and Judge Herlong found Simmons' RICO allegations against General Electric, Metropolitan, and Electric Mutual to be unfounded and additionally held that the "exclusive remedy" provisions of the South Carolina Workers' Compensation Act bar further claims by Simmons against Electric Mutual. Thus, on September 25, 1991, Judge Herlong accepted the recommendation of Magistrate Judge Catoe and granted summary judgment on all counts for respondents General Electric, Metropolitan, and Electric Mutual.

On October 4, 1991, Simmons filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit. This Notice of Appeal was dismissed by the Fourth Circuit on December 27, 1991 as untimely under Fed. R. App. P. 4(a)(4). Simmons' subsequent motion to extend the time for appeal was denied by the United States District Court for the District of South Carolina on January 10, 1992. No appeal was taken from the District Court Order. Instead, Simmons has directly petitioned this Court for review of the Fourth Circuit's ruling dismissing his appeal as untimely, as well as a ruling on the substantive merits of his action. Apparently, Simmons claims that he is due additional benefits beyond those computed by the South Carolina Workers' Compensation Commission, Magistrate Judge Catoe, and District Court Judge Herlong. Electric Mutual contends, and the Magistrate and District Court have agreed, that Simmons is barred from asserting claims against Electric Mutual under the South Carolina Workers' Compensation Act and, in any event, petitioner has received all the benefits to which he is legally entitled.

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[4] Metropolitan is the insurance carrier for several of General Electric's employee benefit plans.

SUMMARY OF ARGUMENT

As an initial premise, Electric Mutual contends that this Court should not grant certiorari because Simmons presents issues not properly before this Court. Simmons' appeal from the September 25, 1991 District Court Order to the Fourth Circuit Court of Appeals was dismissed by the Fourth Circuit as untimely. The district court denied Simmons' subsequent motion for extension of time to file an appeal, and Simmons did not appeal this decision to the Fourth Circuit. Instead, Simmons filed his petition for certiorari directly with this Court. Electric Mutual contends that this is an attempt to petition for certiorari directly from a district court decision, which is improper under Sup. Ct. R. 13 and 28 U.S.C. § 2101.

In addition, the questions presented by Simmons do not satisfy the Supreme Court's criteria for granting a writ of certiorari as set forth in Sup. Ct. R. 10. The questions presented concern only the parties directly involved and are not of sufficient gravity and importance to the general public to warrant review by this Court. The reasons asserted by Simmons for review would require the Court to review and weigh the evidence and to discuss specific facts before ruling upon the correctness of the decisions below. The reasons asserted for review are based upon an alleged conflict in decisions of the circuit courts which does not, in fact, exist. Simmons' grounds for review amount to nothing more than a complaint that the courts below did not agree with his interpretation of the applicable employee plan documents and did not grant him the relief which he requested.

REASONS FOR DENYING THE WRIT

I. THE PETITION FOR CERTIORARI SHOULD BE DENIED BECAUSE SIMMONS DID NOT TIMELY APPEAL THE LOWER COURT DECISIONS AND THE PETITION PRESENTS ISSUES NOT PROPERLY BEFORE THIS COURT.

On September 25, 1991, United States District Judge Henry M. Herlong, Jr. granted summary judgment to all respondents. On December 27, 1991, the Fourth Circuit dismissed Simmons' appeal as untimely under Fed. R. App. P. 4(a)(4). Petitioner's subsequent motion to extend the time for appeal was denied by the district court on January 10, 1992. No appeal was taken from this Order of the district court and, instead, petitioner filed his petition for writ of certiorari with the United States Supreme Court.

Although styled as a petition for writ of certiorari from the Fourth Circuit decision, the petitioner seeks direct Supreme Court review of the merits of his claims and, in particular of the decision of the district court. Such an appeal to the Supreme Court without first exhausting the lower court appellate process is improper. *See* Sup. Ct. R. 13; 28 U.S.C. § 2101. The United States Supreme Court normally will not consider issues which have not been presented to the court of appeals. *See, e.g., Wood v. Strickland*, 420 U.S. 308 (1975); *Neely v. Martin K. Eby Const. Co.*, 386 U.S. 317 (1967) (applying former Supreme Court Rule 40).

II. SIMMONS' ASSERTED REASONS FOR GRANTING CERTIORARI DO NOT FIT WITHIN THE WELL-ESTABLISHED CRITERIA ESSENTIAL FOR REVIEW.

Simmons has asserted two purported bases for granting certiorari, neither of which is compelling. Jurisdiction to bring up cases by certiorari from the courts of appeals was conferred upon the Supreme Court for two purposes:

(1) to secure uniformity of decisions among certain courts; and (2) to bring up questions of importance when it is in the public interest to have these issues decided by the court of last resort. *Rogers v. Missouri Pacific R.R. Co.*, 352 U.S. 518, 530-31 (1957); *Magnum Import Co. v. Coty*, 262 U.S. 159, 169 (1923).

Supreme Court Rule 10 sets forth the "character" of reasons that will be considered by the Court for review. For a case to be reviewed, the reasons asserted must either fall within Rule 10 or otherwise present matters of exceptional gravity or importance to the general public. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251 (1916) (jurisdition to review judgments of courts of appeals by certiorari is to be exercised sparingly, and only in cases of peculiar gravity and general importance, or to secure uniformity of decision); *In re Woods*, 143 U.S. 202 (1892). The reasons asserted for review in this case do not satisfy the above-stated criteria.

A. The Reasons Asserted by Simmons Present a Fact-Specific Question of Contractual Interpretation Which is Important to Only the Parties Directly Involved.

The reasons asserted for review by Simmons present a question which concerns only the parties directly involved in this dispute. Only the petitioner, General Electric, Metropolitan, and Electric Mutual have any significant stake in this controversy. Simmons claims that the district court's interpretation of the employee benefit plan was incorrect, while respondents agree with the court's interpretation.[5] If this Court were to review that interpretation, the conclusion—whether an affirmance or a reversal—would still impact only the relatively few people

[5] It should be reiterated, however, that Electric Mutual is merely the workers' compensation carrier for Simmons' employer, General Electric, and has no contact or association with the employee benefit programs.

who could assert similar claims under that particular plan. That is not a sufficient ground for review.

Certiorari will not be granted to review a judgment of a court of appeals where the case, however important it may be to the petitioner, does not involve a question of gravity or general importance, or present a conflict between decisions of certain courts. *Fields v. United States*, 205 U.S. 292 (1907); *see also Rudolph v. United States*, 370 U.S. 269, 270 (1962) (writ of certiorari was dismissed as improperly granted for a case involving merely a review of findings of fact which would be of no importance except to the litigants themselves), *reh'g denied*, 371 U.S. 854 (1962). Certiorari generally will be denied where the grounds asserted for review require the Court to review and weigh evidence and to discuss specific facts in order to rule on the correctness of the decision below. *Texas v. Mead*, 465 U.S. 1041, 1043 (1984); *United States v. Johnston*, 268 U.S. 220, 227 (1925); *see also National Collegiate Athletic Ass'n v. Board of Regents of Univ. of Oklahoma*, 468 U.S. 85 (1984) (great weight is given to fact-finding by a district court approved by a court of appeals); *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 226 n. 2 (1975) (issue of whether FTC consent order had been violated did not merit Supreme Court's grant of petition for certiorari to review a court of appeals' judgment, where such issue concerned only a particular order as applied to a discrete set of facts).

This is exactly what Simmons has asked the Court to do in this instance. Simmons was unable to get the federal court to agree with his interpretation of General Electric's plan documents. He is simply asking this Court to again review the facts, weigh the evidence, and interpret the plan in a manner consistent with his own interest. Such a self-serving endeavor is obviously of no importance to the general public. In addition, since the question presented is one of interpretation of a very specific provision of the plan, the question is not likely

to recur or present a conflict among circuit courts in the future. Thus, Simmons has not presented any special or important reason for granting the Petition as to any of the Respondents.

In addition to the above, the district court held that Simmons cannot maintain a civil action against Electric Mutual because Electric Mutual is merely the workers' compensation carrier for Simmons' employer, General Electric. More specifically, the district court held that the action was barred by the exclusive remedy provisions of the South Carolina Workers' Compensation Act. *See* S.C. Code Ann. § 42-1-540 (Law. Co-Op. 1976). It is well-settled that when a worker is injured on the job and his injury is covered by a state Workers' Compensation Law, which provides that it is the exclusive remedy, as does South Carolina's, the worker is bound by that provision. In so ruling, the court correctly considered South Carolina statutory and case law. *See Cook v. Mack's Transfer & Storage*, 352 S.E.2d 296 (S.C. Ct. App. 1986), *cert. den.*, 355 S.E.2d 861 (S.C. 1987); *Doe v. South Carolina State Hosp.*, 328 S.E.2d 652 (S.C. Ct. App. 1985). The decision of the district court as to Electric Mutual is based upon the clear language of a state statutory provision and well-settled case law interpreting that provision. This is a question of state, not federal, law and there is no assertion, nor could there be, that this decision conflicts with other circuit court decisions. Accordingly, Simmons has not demonstrated any Rule 10 consideration or other special or important reason for granting the Petition as against Electric Mutual.

B. The District Court's and Fourth Circuit's Judgment is Consistent with the Judgments of Other Circuit Courts and thus, there is no Conflict as Asserted by Simmons.

Both the magistrate and the district court relied on the actual terms of the particular benefit plans and summary plan descriptions in determining the benefits due Simmons. Simmons has apparently alleged that other

circuit courts are in conflict on this issue. However, the circuit courts have been uniform in relying on the actual plan provisions in determining a claimant's eligibility and accrual of benefits. *See e.g., Pratt v. Petroleum Prod. Management, Inc. Employee Sav. Plan & Trust*, 920 F.2d 651 (10th Cir. 1990); *Dameron v. Sinai Hosp. of Baltimore, Inc.*, 815 F.2d 975 (4th Cir. 1987); *In re White Farm Equip. Co.*, 788 F.2d 1186 (6th Cir. 1986); *Delgrosso v. Spang and Co.*, 769 F.2d 928 (3rd Cir. 1985). Simmons has not shown any circuit court which has deviated from this practice.

As noted above, Simmons has not attempted to set forth any conflict in the circuits concerning the propriety of dismissing a claim against an employee's employer under the applicable state workers' compensation law exclusive remedy provisions.

CONCLUSION

For the reasons stated above, respondent Electric Mutual respectfully requests that Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit be denied.

Respectfully submitted,

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July 10, 1992